

REMARKS

In response to the Office Action, Paper No./Mail Date 20080814, dated August 20, 2008, Applicant has carefully studied the references cited by the Examiner and the Examiner's comments relative thereto. This Amendment is being filed within two months of the mailing date of the final action by the Examiner. Thus, it is understood that if an advisory action is not received within the three-month shortened statutory period, the shortened statutory period will expire on the date the advisory action is mailed, as indicated by the Examiner. It is understood that the statutory reply will not expire later than six months from the mailing of the final action.

Claims 1, 22, 26, 38, 52, 55-57, and 59 have been amended.

Claims 49-51 have been cancelled.

No new claims have been added.

Claims 1-10, 22, 26, 38-48, and 52-60 remain in the application.

No new matter has been added.

Reconsideration of the application, as amended, is respectfully requested.

35 U.S.C. § 102(b)

The Examiner rejected Claims 1, 2, 5, 8-10, 22, and 26 as being anticipated under 35 U.S.C. § 102(b) by WO 98/16364 to Clarke for METHOD OF INJECTION MOULDING A FOAMED ARTICLE. Corresponding U.S. Patent No. 6,358,446 to Clarke was relied on by the Examiner for convenience.

The Examiner stated, "Clarke discloses a blow molded bottle comprising three layers: an inner non-foamed layer, an intermediate foam layer, and an outer non-foamed layer."

Claim 1 of the application, as amended, reads as follows (underlining added):

A blow molded container, comprising:
an inner layer of plastic suitable for blow molding;

an outer layer of plastic suitable for blow molding contacting said inner layer, said outer layer of plastic formed as a foam wherein the foam cells contain one of carbon dioxide and nitrogen; and
a threaded portion formed at an end of the container adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam.

Claim 1, as amended, recites a blow-molded container having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the container adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam.” . The preform and bottle of Clarke have an outer non-foamed layer, as acknowledged by the Examiner (See column 11, lines 45-65; and column 12, lines 25-50). In fact, the method of Clarke requires that the outer layer be non-foamed because “a skin is allowed to form” before a sleeve is withdrawn to cause the foaming of the material (See column 11, line 46). This is the opposite of what is recited in Claim 1. Accordingly, each limitation is not disclosed by the reference.

Furthermore, Clarke does not have a threaded portion formed from a foamed layer. Clarke discloses that the “mould is closed to delimit the injection volume to that of the neck portion 51 and the expandable portion” while the threaded portion “remains unfoamed even with relatively high concentrations of blowing agent” (see Col. 9, lines 10-22; and Figs. 1-4 and 16-20). The threaded portion of Clarke is not disposed in the mould where the foaming of the polymer takes place and therefore cannot be formed from a foam (see Figs. 1-4 and 16-20). As a result, the Clarke reference cannot properly serve as a basis for rejection of amended independent Claim 1 or Claims 2, 5, and 8-10, which depend therefrom, under 35 U.S.C. § 102(b).

Because independent Claims 22 and 26 contain at least the same limitations as Claim 1, the Clarke reference cannot properly serve as a basis for rejection thereof.

The Examiner also rejected Claims 38-40 and 42-44 as being anticipated under 35 U.S.C. § 102(b) or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Clarke. Claim 38, as amended, recites a preform having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”. As discussed above, the preform and bottle of Clarke have an outer non-foamed layer, as acknowledged by the Examiner (See column 11, lines 45-65; and column 12, lines 25-50). In fact, the method of Clarke requires that the outer layer be non-foamed because “a skin is allowed to form” before a sleeve is withdrawn to cause the foaming of the material (See column 11, line 46). Furthermore, Clarke does not have a threaded portion formed from a foamed layer. Clarke discloses that the “mould is closed to delimit the injection volume to that of the neck portion 51 and the expandable portion” while the threaded portion “remains unfoamed even with relatively high concentrations of blowing

agent" (see Col. 9, lines 10-22; and Figs. 1-4 and 16-20). The threaded portion of Clarke is not disposed in the mould where the foaming of the polymer takes place and therefore cannot be formed from a foam (see Figs. 1-4 and 16-20). As a result, the Clarke reference cannot properly serve as a basis for rejection of amended independent Claim 38 or Claims 39, 40, and 42-44, which depend directly therefrom, under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a).

The Examiner also rejected Claims 1-5, 8-10, 22, 26, 38-40, 42-49, 51, 52, 54, 55, 57, and 58 as anticipated by or, in the alternative, obvious over U.S. Patent No. 4,872,573 for **PLASTIC CLOSURE WITH BARRIER COATING** to Johnson et al. Because Claims 49 and 51 have been cancelled from the application, the rejection of these claims is moot.

Claim 1, as amended, recites a blow-molded container having "an inner layer of plastic", an "outer layer of plastic formed as a foam", and "a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam". The closure of Johnson has an outer non-foamed layer, as acknowledged by the Examiner (See column 3, lines 45-65). A thorough review of the Johnson referenced shows that it is devoid of any mention of a multilayered container or preform having an outer foamed layer. Furthermore, the Johnson discloses a closure having a threaded portion, and the threaded portion of the closure of Johnson is unfoamed (see Figs. 1, and 3-5). The threaded portion of the present invention is known in the art as a finish. A finish is adapted to receive a corresponding closure, as recited in Claim 1. Therefore, the closure of Johnson, by definition, cannot be a threaded portion (a finish) as recited in Claim 1. Johnson is devoid of any mention of forming the threaded portion of the closure from a foamed polymer. As a result, the Johnson reference cannot properly serve as a basis for rejection of independent Claim 1, as amended, or Claims 2-5 and 8-10, which depend therefrom, under 35 U.S.C. § 102(b).

Because independent Claims 22, 26, 38, 52, 55, and 57 contain at least the same limitations as Claim 1, the Johnson reference cannot properly serve as a basis for rejection thereof. Accordingly, Claims 39, 40, and 42-48, which depend from Claim 38, and Claim 58, which depends from Claim 57, are also allowable over Johnson.

The Examiner also rejected Claims 38, 40, 42-44, and 49-60 as being anticipated under 35 U.S.C. § 102(b) or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,215,691 to Bland et al. for **METHOD OF FORMING A COEXTRUDED FOAM COMPOSITE**. Because Claims 49-51 have been cancelled, the rejection of these claims is moot.

Claim 38, as amended, recites “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”. A thorough examination of Boyd reveals that Boyd discloses a bag structure and is devoid of any mention of a blow molded container having a threaded portion formed from a foam, nor does Bland disclose that a gas is injected into the polymer in a supercritical state. As a result, the Boyd reference cannot properly serve as a basis for rejection of amended independent Claim 38 or Claims 40, and 42-44, which depend directly therefrom, under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a).

Because independent Claims 52, 55, 56, 57, and 59 contain at least the same limitations as Claim 1, namely, a threaded portion formed from a foam, the Boyd reference cannot properly serve as a basis for rejection thereof. Accordingly, Claims 53 and 54, which depend from Claim 52, Claim 58, which depends from Claim 57, and Claim 60, which depends from Claim 59, are also allowable over Boyd.

35 U.S.C. § 103(a)

The Examiner rejected Claims 3, 4, 6, 7, and 41 as obvious over Clarke in view U.S. Patent No. 6,485,819 for ALIPHATIC-AROMATIC COPOLYESTERS to Hayes under 35 U.S.C. § 103(a). Applicant respectfully asserts that the Examiner has failed to establish a *prima facie* case of obviousness in regards to Claims 3, 4, 6, 7, and 41 because the cited references do not contain any motivation or suggestion to combine references.

Dependent Claims 3, 4, 6, and 7 contain at least the same limitations as independent Claim 1, as amended, namely, a blow molded container having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”. Dependent Claim 41 contains at least the same limitations as independent Claim 38, as amended, namely, a preform having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”.

A thorough examination of Hayes shows it is completely devoid of any disclosure regarding multilayer objects, such as a bottle and a preform, comprised of identical materials. Hayes is also devoid of any disclosure of a threaded portion formed from a foamed layer.

Therefore, Hayes does not cure the defects of Clarke, namely, neither Clarke nor Hayes teach or suggest a blow molded container or a preform having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”.

Accordingly, the combination of Clarke and Hayes does not produce each and every limitation of independent Claims 1 and 38, as amended. As a result, no combination of references can properly serve as a basis for rejection of independent Claim 1 or Claims 3, 4, 6, and 7 which depend therefrom, and independent Claim 38 or Claim 41 which depends therefrom, under 35 U.S.C. § 103(a).

The Examiner also rejected Claim 41 as obvious over Bland in view of U.S. Patent No. 4,533,578 for METHOD OF FORMING A COEXTRUDED FOAM COMPOSITE to Bland et al. under 35 U.S.C. § 103(a).

Dependent Claim 41 contains at least the same limitations as independent Claim 38, as amended, namely, a preform having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”. As discussed above, Boyd does not disclose a threaded portion formed from a foam. A thorough examination of Bland shows it is completely devoid of any disclosure of a bottle and a preform formed from identical materials. Bland is also devoid of any disclosure of a threaded portion formed from a foamed layer. Therefore, Bland does not cure the defects of Boyd, namely, neither Bland nor Boyd teach or suggest a blow molded container or a preform having “an inner layer of plastic”, an “outer layer of plastic formed as a foam”, and “a threaded portion formed at an end of the preform adapted to receive a cooperating closure, wherein said threaded portion is formed from at least said outer layer formed as a foam”. Accordingly, the combination of Bland and Boyd does not produce each and every limitation of Claim 41.

Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

Double Patenting

The Examiner has provisionally rejected Claims 1-10, 22, 26, and 38-60 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims

1-26 of copending Patent Application Ser. No. 11/384,979. The Examiner noted that, “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the ‘979 patent application fully encompass the claimed subject matter.”

Because Claims 49-51 have been cancelled from the application, the Examiner’s rejection of these claims is moot. Furthermore, Claims 1-10, 22, 26, 38-48, and 52-60 have been amended or depend from amended claims, and Applicant believes the claims of the application are allowable over the art of record. Accordingly, the Double Patenting rejection is the only remaining rejection of the Examiner.

The Applicant requests that the Double Patenting rejection be withdrawn. Pursuant to MPEP 804(I)(A)(1), because the “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the present application (the earlier filed of the two pending applications), and the later-filed application is rejectable on other grounds, the Examiner is requested to withdraw the rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. The Applicant believes the Double Patenting rejection is improper and reserves the right to traverse the rejection at a later date, if necessary.

Remarks

The Applicant respectfully asserts that the Amendment places the claims of the application in position for allowance. Applicant further respectfully submits that consideration of the amended claims for purposes of allowance would not seriously burden the Examiner’s search and examination thereof. The Examiner has thoroughly searched U.S. Classes 215, 264, and 428 and has not found references citing each every limitation of the independent claims as previously presented or as amended. The Examiner has relied on the same references for each of the last three Office Actions, and the Applicant believes the Examiner will not find any new references in a new search. If a reference showing a threaded portion adapted to receive a closure formed from a layer formed from a foam, it would have been located by now. In fact, any new search conducted by the Examiner would use the same search terms and search criteria previously used.

The Applicant appreciates that the Examiner may find that the amendment touches on the merits of the application. However, “[a]n amendment touching the merits of the application... may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented” (see 37 CFR 1.116). Furthermore, the

Examiner has the authority to enter and consider an amendment where “only a cursory review” is required (see MPEP 714.13(II)). The Applicant believes that, among other reasons, the amendment will distinguish the subject matter of the invention from the references cited by the Examiner, and thus place the claims in a form suitable for allowance. The amendments were not previously because they limit the scope of the claims and the Applicant believed it would be able to overcome the Examiner’s rejection without such a narrowing amendment. Also, the amendments to the claims would require only a cursory review of the references cited by the Examiner, specifically the Clarke reference, and should therefore be entered and considered by the Examiner. The amendments distinguish the claimed invention from the cited references and are directed to patentable subject matter.

In any event, the Applicant believes that the amendments to the claims should be entered for purposes of appeal because the Amendment simplifies the issues on appeal.

The other references cited by the Examiner, but not applied, have been studied and are not considered to be any more pertinent than the references relied upon by the Examiner.

It is submitted that the claims distinctly define the Applicant’s invention and distinguish the same from the prior art. Reconsideration of the application, as amended, is respectfully requested. A formal Notice of Allowance is solicited.

While the Applicant’s attorney has made a sincere effort to properly define Applicant’s invention and to distinguish the same from the prior art, should the Examiner deem that other language would be more appropriate, it is requested that a telephone interview be had with the Applicant’s attorney in a sincere effort to expedite the prosecution of the application.